



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: The Department of the Navy; Fairchild Weston  
Systems, Inc.--Request for Reconsideration  
File: B-230013.2; B-230013.3  
Date: July 29, 1988

## DIGEST

Protest presented a significant issue justifying consideration on the merits even though it was untimely filed where, based on the fully developed record, it was clear that the contracting agency had unreasonably excluded the protester from the competitive range contrary to the procurement statutes and regulations.

## DECISION

The Department of the Navy and Fairchild Weston Systems, Inc., request reconsideration of our decision Loral EOS/STS, Inc., B-230013, May 18, 1988, 88-1 CPD ¶ 467. In that decision, we sustained a protest filed by Loral concerning its exclusion from the competitive range under request for proposals (RFP) No. N61339-87-R-0029, for Tank Weapon Gunnery Simulation System (TWGSS) and Precision Gunnery System (PGS) training devices. The Navy and Fairchild, one of the offerors included within the competitive range, argue that we incorrectly invoked the significant issue exception to our timeliness rules contained in our Bid Protest Regulations at 4 C.F.R. § 21.2(b) (1988). The requests for reconsideration are denied.

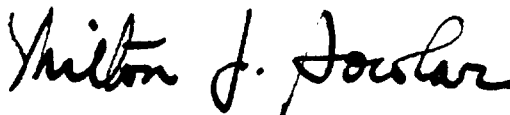
In the decision, we concluded that Loral's protest was not timely filed by 1 day because it ran afoul of our rule that where federal offices in Washington, D.C. are closed due to snow, but other government offices in other locations are open, the snow day is counted as a working day for timeliness purposes unless it falls on the last day of the timeliness period. Booz-Allen & Hamilton, Inc.--Reconsideration, B-225770.2, May 1, 1987, 87-1 CPD ¶ 460. Nevertheless, we considered the protest on its merits under 4 C.F.R. § 21.2(b), which provides that our Office may consider an untimely protest in appropriate circumstances. Specifically, we concluded that Loral's protest was appropriate

for decision because it involved a significant issue in that the agency's unreasonable exclusion of the Loral proposal from the competitive range was inconsistent with statute and regulation. See Adrian Supply Co.--Reconsideration, B-225440.2, Mar. 30, 1987, 66 Comp. Gen. \_\_\_, 87-1 CPD ¶ 357.

In their requests for reconsideration, the Navy and Fairchild essentially disagree with our decision to consider the protest under 4 C.F.R. § 21.2(b). The Navy argues that the case did not present a significant issue. Both parties complain that our consideration of Loral's protest creates uncertainty in the procurement process.

Our decision as to what constitutes a significant issue is made on a case-by-case basis. Technical Services Corp., B-190942, Apr. 13, 1978, 78-1 CPD ¶ 282. The regulations give our Office the discretion to invoke the significant issue exception to our timeliness rules when in our judgment the circumstances of the case are such that our consideration of the protest would be in the interest of the procurement system. In this case, based on the fully developed record, it was clear that the agency had unreasonably excluded the protester from the competitive range contrary to the procurement statutes and regulations. In our view, dismissing the protest would have had a detrimental effect on the procurement system and, as a result, we concluded that the protest presented a significant issue which justified invoking the exception to our timeliness rules. Contrary to the requesters' contention, we do not agree that our decision to consider this case on the merits will lead to a weakening of our timeliness rules or an expansion of the significant issue exception to those rules. Rather, our holding is limited to the circumstances of this particular case.

Since we continue to believe that we properly exercised our discretion in considering the protest, the requests for reconsideration are denied.



**Acting** Comptroller General  
of the United States